

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KIMBERLY HORNE, :
Plaintiff(s), :
vs. : Case Number: 1:07cv1032
COMMISSIONER OF SOCIAL SECURITY, : Chief Judge Susan J. Dlott
Defendant(s). :
:

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to Timothy S. Hogan, United States Magistrate Judge . Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on February 5, 2009 a Report and Recommendations(Doc. 11). Subsequently, the plaintiff filed objections to such Report and Recommendation (Doc. 13).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

The Court's duty on appeal is not re-weigh the evidence, but to determine whether the decision is supported by substantial evidence. *See, Raisor v. Sch wieker*, 540 F. Supp. 686 (S.D. Ohio 1982). The evidence "must do more than create a suspicion of the existence of the fact to be established....[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *Lemaster v. Secretary of Health and Human Services*, 802 F.2d 839, 840 (6th Cir. 1986), quoting, *NLRB v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300 (1939). The Commissioner's

decision in this case is supported by such evidence.

Because substantial evidence supports the decision of the ALJ, the Court therefore orders his decision is **AFFIRMED** and this case is **DISMISSED** from the docket of this Court.

IT IS SO ORDERED.

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s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court